

SERVICE DATE - JUNE 21, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 414X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY—ABANDONMENT EXEMPTION—
IN MODOC AND SISKIYOU COUNTIES, CA

Decided: June 18, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon and discontinue service over a 33.77-mile line of railroad between milepost 0.00 near Lookout, and milepost 33.77 near Hambone, in Modoc and Siskiyou Counties, CA. Notice of the exemption was served and published in the Federal Register on May 21, 2004 (69 FR 29347). The exemption is scheduled to become effective on June 22, 2004.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 28, 2004. In the EA, SEA states that the Forest Service (FS) advised that the proposed project impact area that crosses the Modoc National Forest does not include any established wildlife sanctuaries or refuges. FS advised that surveys for threatened, endangered and sensitive species (TES) have not been conducted in the project area. FS states that there is a possibility of bald eagles nesting in the area that would necessitate either a limited salvage period precluding salvage activities during nesting months, or a survey to determine if indeed the species utilizes the impacted area. FS also advises that a survey for TES plant species would also be required should the project surface impact extend beyond the extent of the right-of-way. To address the concerns of the FS, SEA recommends the imposition of a condition requiring that prior to salvage, BNSF be required to consult with FS: (a) to determine if additional documentation is needed to determine if the Bald Eagle inhabits the project area, and if so, whether the Bald Eagle would be impacted by salvage activities; and (b) if salvage activities extend beyond the right-of-way, to determine if any TES plant species would be impacted by salvage activities.

SEA also states that the California Regional Water Quality Control Board (CRWQCB) advised that a Construction Storm Water Permit may be required for salvage activities. The U.S. Army Corps of Engineers (Corps) advised that salvage activities may be within their jurisdiction and a permit may be required. Therefore, SEA recommends that, prior to salvage activities, BNSF be required to: (a) consult with CRWQCB to determine if a Construction Storm Water Permit is required; and (b) consult with the Corps to determine if a permit is required.

In the EA, SEA initially recommended that BNSF retain its interest and take steps to alter the historic integrity of the line and all sites and structures on the line until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Since the EA was served, the State Historical Society of North Dakota (SHPO) has made a determination of “No Historic Properties Affected” provided that accurate information has been provided regarding the proposed abandonment.¹ Based on this information, SEA has determined that the previously recommended historic condition is no longer necessary. Instead, SEA recommends the imposition of a condition requiring that, prior to beginning salvage activities, BNSF be required to submit site forms and the final cultural resources report for the project of the SHPO.

Comments to the EA were due by June 14, 2004. Based on comments to the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker (J 500) that may be affected by the proposed abandonment. Therefore, SEA recommends that BNSF provide NGS with 90 days’ notice prior to disturbing or destroying the identified marker to plan for its relocation.

Based on SEA’s recommendations, the recommended environmental conditions will be imposed.

On June 1, 2004, Rails to Trails Conservancy (RTC) filed a request for issuance of a notice of interim trail use (NITU) for the subject line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), to negotiate with BNSF for acquisition of the right-of-way for use as a trail. RTC submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29 and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service, as required at 49 CFR 1152.29. By letter filed on June 9, 2004, BNSF indicated its willingness to negotiate with RTC for interim trail use.

Because RTC’s request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration of railroad purposes.

¹ In the EA, SEA stated that the SHPO had submitted comments stating that additional information is required before a determination of effect in accordance with 36 CFR 800 can be completed.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on May 21, 2004, exempting the abandonment of the line is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days commencing from the June 22, 2004 effective date of the exemption (until December 19, 2004), and subject to the conditions that: (1) prior to beginning salvage activities, BNSF consult with the FS to determine if additional documentation is needed to determine if the Bald Eagle inhabits the project area, and if so, whether the Bald Eagle would be impacted by salvage activities and, if salvage activities extend beyond the right-of-way, to determine if any TES plant species would be impacted by salvage activities; (2) prior to beginning salvage activities, BNSF consult with the CRWQCB to determine if a Construction Storm Water Permit is required and consult with the Corps to determine if a permit is required; (3) prior to beginning salvage activities, BNSF submit site forms and the final cultural resources report for the property to the SHPO; and (4) BNSF consult with the NGS and provide NGS with 90 days' notice prior to disturbing or destroying the identified marker to plan for its relocation.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by December 19, 2004, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary